

PRACTICE DIRECTION
COURT OF QUEEN'S BENCH OF MANITOBA
RE: RECENT AMENDMENTS TO QUEEN'S BENCH RULE 70
EFFECTIVE AUGUST 1, 2019

A number of amendments to Queen's Bench Rule 70 will come into effect on August 1, 2019 under Manitoba Regulation 109/2019. This Practice Direction will provide guidance with respect to the amendments. It should be read in conjunction with the various Practice Directions issued previously with respect to the New Family Division Model [December 14, 2018, December 17, 2018, February 28, 2019 and June 28, 2019].

QBR 70.03(2) Commencement of Family Proceedings

The amendment adds in corollary relief proceedings under s. 15 of the *Divorce Act (Canada)*. This relief had been omitted from the rule inadvertently. The amendment allows for a party to commence an action for corollary relief by the filing of a Petition.

QBR 70.13(1) correction of wording

This amendment corrects wording to indicate that rule 70.12 is referred to in the rule.

QBR 70.24(15.1) to (15.6) Appeals of Masters' Orders

This substantive amendment provides for an appellate process in family proceedings that are subject to the case management process. The previous process was incongruent with the existing general rules under QBR 62 for appeals of a Master's order, particularly if the order strikes a pleading or declines to set aside default. As well, in the absence of Family Division dockets under the New FD Model, the issue of a "return date" for appeals needed to be addressed.

The new rule states:

Appeals not subject to Rule 62

70.24(15.1) Rule 62 does not apply to an appeal of an order of a master in a family proceeding that is subject to the case management process established by this rule.

Notice of appeal from order of a master

70.24(15.2) A party to a family proceeding who seeks to appeal an order of a master must

- (a) file a Notice of Appeal (Form 70CC) within 14 days after the order is signed;
- (b) obtain a returnable date from the registrar; and
- (c) serve the Notice of Appeal with the returnable date on all parties whose interests may be affected by the appeal within 14 days after the Notice of Appeal was filed.

Relief sought on appeal

70.24(15.3) The Notice of Appeal must state the relief sought and the grounds of appeal. No grounds other than those stated in the notice may be relied on at the hearing, except with leave of the judge hearing the appeal.

Process on returnable date

70.24(15.4) On the returnable date,

- (a) in the case of an appeal of an order that strikes out a pleading or that either declines or allows the setting aside of default judgment, the judge must
 - (i) proceed to hear the appeal, or
 - (ii) set a hearing date for the appeal and give directions to the parties respecting the appeal; or
- (b) in the case of all other appeals, the judge must adjourn the hearing of the appeal to the triage conference for the proceeding that is to be scheduled in accordance with this rule and give directions to the parties respecting the appeal.

Appeals at triage conference

70.24(15.5) When an appeal is to be dealt with at a triage conference, the triage judge must either hear the appeal at the conference or set a prioritized hearing for the appeal.

Adducing further evidence at appeal hearing

70.24(15.6) The hearing of an appeal from a master is a fresh hearing and the parties may not adduce further evidence, except with leave of the judge hearing the appeal.

Parties and counsel are reminded that, in cases subject to the case management process, the limitation date for the filing of an appeal of a Master's order is 14 days from the signing of the order.

Prior to filing the Notice of Appeal, the appellant must contact the Triage Conference Coordinator to obtain a hearing date before a judge. The appellant must serve the Notice of Appeal within 14 days of filing the Notice.

The judge assigned to the matter will review the materials filed. If the Master's order is dispositive of a matter (striking a pleading or refusing to lift default), then the judge will either hear the matter on the return date, or the judge will set the matter for a hearing. The need for this is obvious, as the appellant is barred by the Master's order from participating in the litigation. The responding party will not be permitted to seek a default judgment while the appeal is pending.

If the Master's order is with respect to non-dispositive matters such as satisfaction of prerequisites, the judge will adjourn the appeal to the triage conference date (to be set). The triage judge will hear the appeal at the triage conference, or will set a prioritized hearing (within 30 days of the triage conference) to hear the appeal. If a prioritized hearing is set, then the case conference date will be set for 30 days after the prioritized hearing.

The parties will be limited at the appeal hearing to the evidence presented to the Master unless the judge gives the parties leave to provide further evidence.

A new form, Form 70CC Notice of Appeal, is attached to this Practice Direction.

QBR 70.24(16) Starting the Triage Process

This amendment was made to clarify the process for filing documents as the experience so far has been the parties and counsel have been filing a Request for Triage with no Certificate of Prerequisite Completion or Triage Brief. The rule now directs that all three documents are to be filed at the same time. Failure to do so will result in the Request being rejected at the counter.

The responding party once served with the three documents must file their Certificate of Prerequisite Completion and Triage Brief no later than three days before the triage screening date. Again, both documents must be filed at the same time. Failure to file both documents may be considered an intentional delay in advancing the proceeding to the triage conference. The moving party may seek an order from the Master to compel the responding party to file the materials and/or may seek to strike the responding pleading and seek costs.

QBR 70.24(31.1) Request for Motion or Subsequent Case Conference

In the New FD Model, once the first case conference is held, the case conference judge is seized of the matter and will hear all subsequent case conferences and motions [QBR 70.24(31)]. The amendment creates a new process for requesting permission from the case conference judge to bring a motion or to schedule a further case conference.

Request for motion or subsequent case conference

- 70.24(31.1)** If, after the first case conference has been held, a party seeks
- (a) to bring a motion that has not already been scheduled by the case conference judge or for which leave has not previously been granted by the case conference judge; or
 - (b) another case conference to be held
 - (i) before the date of the next case conference that had been scheduled by the case conference judge, or
 - (ii) when the case conference judge has not scheduled the next case conference;

the party must file a request for motion or subsequent case conference (Form 70DD) and comply with the process set out in a practice direction issued by the Chief Justice.

The former practice of writing directly to the case conference judge will no longer be permitted. Instead, parties and counsel are to take the following steps:

STEP 1: Completing the Request (Form 70DD)

- a. the party seeking to bring a motion or schedule a subsequent case conference must indicate the reasons that a motion or subsequent case conference is necessary. Set out the reasons in concise number paragraphs;
- b. the consent of the other party is not necessary but is preferred;
- c. if an appearance by telephone is required then this must also be indicated on the form
- d.

STEP 2: Filing the Request

- a. In Winnipeg Centre, the request form is filed at the front counter and then it is referred to the Family Case Conference Coordinator, Ms. Sharon Wolbaum;
- b. In other Centres, the request form is filed and referred to the Deputy Registrar;

- c. The Coordinator/DR will check the case conference memorandum to determine if the case conference judge has already provided permission to bring the motion or schedule a subsequent case conference. If permission is contained in the case conference memorandum, then the Coordinator/DR will proceed to schedule the motion or subsequent case conference. If permission is not contained in the case conference memorandum, the next step is taken:

STEP 3: Obtaining a Response to the Request

- a. The Case Conference Coordinator/DR will forward the Request to the assigned case conference judge who will review the request and determine if permission to bring the motion or schedule a subsequent case conference will be granted.
- b. If the permission to bring the motion or schedule a subsequent case conference is granted, then the judge will specify which documents are to be filed, provide deadlines for filing, and will direct the manner of service of the documents. The Request Form is completed and signed by the case conference judge, and returned to the Case Conference Coordinator/DR. The Case Conference Coordinator/DR will provide a date for the motion/subsequent case conference. A copy of the completed Request Form is provided to the moving party for service upon the responding party.
- c. If the permission to bring the motion or schedule a subsequent case conference is not granted, then the judge will provide written reasons on the Request Form and will sign the form, returning it to the Case Conference Coordinator/DR. The Case Conference Coordinator/DR will provide a copy of the completed Request Form to the moving party for service upon the responding party.

Parties and counsel are reminded that they do not need to file a Request Form if the case conference judge has already granted permission to bring a motion or schedule a subsequent case conference. Such permission is usually contained in the judge's case conference memorandum provided to the parties after each case conference.

It is recommended that counsel discuss with one another both the need for a subsequent case conference, and the issues that are to be addressed by the case conference judge.

The new form, Form 70DD Request for Motion or Subsequent Case Conference, is attached to this Practice Direction.

QBR 70.37(6.1) Opposition to Variation

When a party is served with an application or motion to vary a final order, they have 20 days (if served in Manitoba, longer if served outside Manitoba), to file their documents in opposition. The amendment clarifies the rule and requires that the three documents in opposition are to be filed at the same time:

- (a) a notice of opposition to variation (Form 70H.1);
- (b) a responding affidavit; and
- (c) Parts 1, 2, 3 and 4 of Form 70D (financial statement), if a party is seeking to vary, rescind or suspend support.

Failure to file all three documents at the same time will result in the notice of opposition being rejected at the counter. The filing of the notice alone is not acceptable and only serves to delay the proceeding.

QBR 70.37(6.3) correction

A grammatical error was corrected by substituting the word "within" for the word "with".

CHANGES TO EXISTING FORMS

Certain forms are changed to give effect to the amendments. The new versions of these forms can be found in Manitoba Regulation 109/2019. The changed forms are:

- Form 70A Petition for Divorce
- Form 70B Petition
- Form 70D.2 Request for Triage Conference
- Form 70D.3 Certificate of Prerequisite Completion
- Form 70G.1 Notice of Application for Provisional Order to Vary

These forms should be used **after August 1, 2019**.

NEW FORMS

As referenced earlier in the Practice Direction, there are two new forms which should be used **after August 1, 2019**:

- Form 70CC Notice of Appeal from a Master for a Family Proceeding Under Case Management Process
- Form 70DD Request for Motion or Subsequent Case Conference

Coming into effect

This Practice Direction comes into effect on August 1, 2019.

ISSUED BY:

"original signed by Joyal, C.J."

**The Honourable Chief Justice Glenn D. Joyal
Court of Queen's Bench (Manitoba)**

Date: July 30, 2019